



# NEWS

Judicial Council of California  
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## **SUMMARY OF CASES ACCEPTED DURING THE WEEK OF NOVEMBER 26, 2001**

[This news release is issued to inform the public and the press of cases that the Supreme Court has accepted and of their general subject matter. The description or descriptions set out below do not necessarily reflect the view of the court, or define the specific issues that will be addressed by the court.]

#01-155 People v. Batts, S101183. (B139901; unpublished opinion.) Petition for review after the Court of Appeal reversed judgments of conviction of criminal offenses. This case includes the issue of whether the trial court properly found that prosecutorial misconduct which occurred at a prior trial was not intended to provoke a mistrial and thus did not bar a retrial under double jeopardy principles.

#01-156 Humphrey v. Appellate Division, S101047. (B149998; 91 Cal.App.4th 948.) Petition for review after the Court of Appeal granted a peremptory writ of mandate. This case includes the issue of whether an application for a search warrant under Penal Code section 1524.1, requiring an accused to supply a blood sample to be tested for the human immunodeficiency virus, must be supported by an affidavit that is based on personal knowledge of the affiant rather than by an affidavit that is based on information and belief.

#01-157 Dupre v. Calendo, Puckett, S101268. (B140467; unpublished opinion.) Petition for review after the Court of Appeal reversed a summary judgment in a civil action. The court ordered briefing deferred pending decision in Colmenares v. Braemar Country Club, Inc., S098895 (#01-103), which presents issues concerning (1) whether the

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Fair Employment and Housing Act (Gov. Code, § 12940 et seq.), prior to the enactment of Government Code section 12926.1 and the amendment of Government Code section 12926, subdivision (k) by the Prudence Kay Poppink Act (stats. 2000, ch. 1049), required that a plaintiff who alleges that he or she was discriminated against on the basis of disability, prove that his or her disability *substantially* limited a major life activity; and (2) whether the 2000 legislation, which explicitly provides that a substantial limitation is *not* required, should be applied retroactively if it represents a change in the law rather than a clarification of the preexisting law.

### **DISPOSITION**

#00-152 People v. Marshall, S091666, was dismissed and remanded to the Court of Appeal.

### **STATUS**

#01-84 Rice v. Clark, S097456. The court ordered briefing expanded to include the following issues: Do the amendments made to Probate Code section 21350 by chapter 730, section 12 of the 1995 statutes apply to the instruments whose validity is disputed in this case? If not, is a remand to the superior court required for a determination of whether defendant caused the instruments to be drafted within the meaning of section 21350 as enacted in 1993?

#01-42 Manduley v. Superior Court, S095992. The court granted a request for extended media coverage of the December 5, 2001 oral argument in this matter, subject to the conditions set forth in rule 980 of the California Rules of Court.